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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re STEVE G., a Person Coming Under
the Juvenile Court Law.

B247743
(Los Angeles County
Super. Ct. No. VJ40874)

THE PEOPLE,

Plaintiff and Respondent,

v.

STEVE G.,

Defendant and Appellant.

Appeal from dispositional order following judgment of the Los Angeles Superior Court. Cynthia Loo, Judge. Modification of dispositional order granted.

Courtney M. Selan, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Mary Sanchez and David Zarmi, Deputy Attorneys General, for Plaintiff and Respondent.

After the juvenile court sustained a third petition alleging that appellant minor Steve G. comes within section 602 of the Welfare and Institutions Code, the court placed appellant in a community program for a maximum term of seven years eight months, with 85 days of predisposition credit. Respondent concedes that the maximum term and days of predisposition credit were miscalculated.

Background

A February 7, 2011 petition under Welfare and Institutions Code section 602 alleged that on February 4, 2011, appellant had been detained for violation of Penal Code section 242, a misdemeanor battery.¹ At a March 22, 2011 adjudication, appellant admitted the allegation, the petition was sustained, the offense was declared to be a misdemeanor, and he was ordered home on six months probation.

A petition filed under Welfare and Institutions Code section 602 on October 31, 2011, and amended November 10, 2011, alleged that on or about September 11, 2011, appellant had violated section 136.1, subdivision (c)(1), dissuading a witness by force or threat, a felony (count 1); section 136.1, subdivision (b)(1), dissuading a witness from reporting a crime, a felony (count 2); section 242, battery, a misdemeanor (count 3); section 243, subdivision (d), battery with serious bodily injury, a felony (count 4); and section 591.5, obstructing use of a wireless device to communicate with assistance, a misdemeanor (count 5). Appellant admitted to count 4, a felony, and count 5, a misdemeanor. Counts 1, 2 and 3 were dismissed in the interests of justice. Home probation was terminated, and appellant was placed in juvenile hall detention pending suitable placement, for a maximum term of four years six months, with 43 days of predisposition custody credit.

A third petition under Welfare and Institutions Code section 602, filed January 22, 2013, alleged that on or about December 10, 2012, appellant had committed felony second degree robbery (§ 211), and that in the commission of that offense he had used a

¹ All further statutory references are to the Penal Code unless otherwise specified.

knife, a deadly and dangerous weapon (§ 12022, subd. (b)(1)), causing the offense to be a serious felony (§ 1192.7, subd. (c)(23)). The juvenile court sustained the petition on February 13, 2013. At the dispositional hearing the robbery was declared to be a felony. The court ordered appellant's placement in the Optimist Group community program, with physical confinement for a maximum period of seven years eight months, with predisposition credit of 85 days. Appellant filed a timely appeal.

Discussion

Appellant contends on appeal that the court erred in computing the maximum period of confinement, and the days of predisposition custody credit.

1. Maximum period of confinement

When a juvenile court declares a minor to be a ward of the court under Welfare and Institutions Code section 602 and removes the minor from the parents' custody, it must specify a maximum period of confinement that does not exceed the maximum time prescribed by the adult sentencing law. (Welf. & Inst. Code, § 726; *In re Jovan B.* (1993) 6 Cal.4th 801, 818; *In re Carlos E.* (2005) 127 Cal.App.4th 1529, 1534, 1538.) Under the formula set forth in section 1170.1, subdivision (a), if the court sentences the minor to consecutive terms on multiple counts or petitions, the maximum term of confinement is the sum of the principal term (the longest term imposed for any of the offenses) and the subordinate terms (one-third of the midterm imposed for each other offense). (*In re Eric J.* (1979) 25 Cal.3d 522, 536.)

Under that formula, the longest term is for the robbery offense: the principal term of five years (§ 213, subd. (a)(2)), with an additional year for the deadly weapon enhancement (§ 12022, subd. (b)(1)), for a total of six years. The midterm dispositions for the misdemeanor battery and misdemeanor obstruction of use of wireless device offenses under sections 242 and 591.5, were each six months (§ 19); and the midterm disposition for the felony battery offense under section 243, subdivision (d), was three years—one-third of each of which total one year four months. The total disposition

therefore should have been seven years four months, rather than the seven years eight months imposed by the juvenile court.

Respondent concedes that this error should be corrected.

2. Predisposition custody credit

Appellant was detained for four days (Feb. 4-7, 2011) before disposition on the first petition. He was detained 44 days (Oct. 19, 2011-Dec. 1, 2011) before disposition on the second petition. He was detained 42 days (Jan. 18-Feb. 28, 2013) before disposition on the third petition. These predisposition detentions total 90 days, rather than the 85 days for which he was given credit.

Respondent concedes that this error should be corrected. Under this court's statutory power to modify an improper punishment imposed (§ 1260), we direct the issuance of an amended abstract of judgment specifying that appellant's maximum period of physical confinement is seven years four months, and that he has predisposition custody credit of 90 days.

Disposition

Appellant's disposition is modified to specify that his maximum period of physical confinement is seven years four months, and that he has predisposition custody credit of 90 days. In all other respects, the order of disposition is affirmed.

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CHANNEY, Acting P. J.

We concur:

JOHNSON, J.

MILLER, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.